

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
No. 4:19-CV-84-BO

GREGORY HEMBY,
Plaintiff,
v.
THE OFFICE OF THE DISTRICT
ATTORNEY, PITT COUNTY, NORTH
CAROLINA and PITT COUNTY
MAGISTRATE OFFICE,
Defendants.

ORDER

This cause comes before the Court on the memorandum and recommendation by United States Magistrate Judge Robert B. Jones, Jr. [DE 4]. On June 5, 2019, Judge Jones recommended that plaintiff be permitted to proceed *in forma pauperis* but that his claims be dismissed. *Id.* Plaintiff has filed an objection in response. [DE 6]. For the reasons that follow, the M&R [DE 4] is ADOPTED and plaintiff's complaint is DISMISSED WITHOUT PREJUDICE.

BACKGROUND

On June 3, 2019, plaintiff filed a *pro se* application to proceed *in forma pauperis* under 28 U.S.C. § 1915. [DE 1]. Plaintiff alleges that he was wrongfully arrested without probable cause and maliciously prosecuted for Second Degree Trespass in Pitt County District Court, Case No. 18-CR-056398. On June 5, Judge Jones entered the instant memorandum and recommendation (M&R), granting plaintiff's application to proceed *in forma pauperis* and recommending that plaintiff's claims be dismissed. [DE 4]. Plaintiff responded, generally arguing that he was "unjustly

victimized by a legal system without any redress” and that “[s]omething happened, and it was wrong, and it affected Plaintiff to his detriment.” [DE 6].

DISCUSSION

A district court is required to review *de novo* those portions of an M&R to which a party timely files specific objections or where there is plain error. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 149–50 (1985). “[I]n the absence of a timely filed objection, a district court need not conduct *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (internal quotation and citation omitted).

The Court construes plaintiff’s response as a generalized, non-specific objection to the Court dismissing his claims with prejudice. Plaintiff does not challenge any of the legal conclusions in the M&R and, indeed, appears to concede that dismissal of this federal case is appropriate. Plaintiff includes a sentence in his objection notifying the Court of his intent to voluntarily dismiss this action “for purposes of preserving his right to appeal or of the filing of this matter in the state court,” while simultaneously asking the Court to “forward a copy of this disposition and notice of ‘why’ to the Pitt County District Court.” [DE 6]. But the Court construes plaintiff’s response as a generalized objection to dismissal with prejudice, which could preclude him from pursuing his claims in state court, rather than as a notice of voluntary dismissal. Because plaintiff makes only a generalized objection to the M&R, the Court “must only satisfy itself that there is no clear error on the face of the record.” *Diamond*, 416 F.3d at 315.

The Court has reviewed the M&R and is satisfied that there is no clear error on the face of the record. Dismissals under 28 U.S.C. § 1915(e)(2)(B), as here, should generally be without

prejudice. *Nagy v. FMC Butner*, 376 F.3d 252, 258 (4th Cir. 2004). Accordingly, the M&R is adopted and plaintiff's complaint is dismissed without prejudice.

CONCLUSION

The memorandum and recommendation of Magistrate Judge Jones [DE 4] is ADOPTED and plaintiff's complaint is DISMISSED WITHOUT PREJUDICE.

SO ORDERED, this 13 day of June, 2019.


TERRENCE W. BOYLE
CHIEF UNITED STATES DISTRICT JUDGE